

HOUSE BILL NO. 430

INTRODUCED BY A. BLEWETT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A LANDOWNER OR OTHER PERSON MAY NOT CREATE A BARRIER CONSISTING OF BARBED WIRE ACROSS A NAVIGABLE STREAM; PROVIDING A PENALTY; REVISING LANDOWNER RECREATIONAL LIABILITY LAW WITH REGARD TO CREATING A BARRIER CONSISTING OF BARBED WIRE ACROSS A NAVIGABLE STREAM; AMENDING SECTIONS 23-2-311, 23-2-321, AND 70-16-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Legislature recognizes the balance between a landowner's right to create barriers across streams for purposes of land or water management or to establish land ownership and the right of a member of the public to make recreational use of surface waters; and

WHEREAS, prohibiting the use of barbed wire to create barriers across streams will maintain the rights of landowners and the recreating public while protecting public safety.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-311, MCA, is amended to read:

"23-2-311. Right to portage -- establishment of portage route. (1) A member of the public making recreational use of surface waters may, above the ordinary high-water mark, portage around barriers in the least intrusive manner possible, avoiding damage to the landowner's land and violation of ~~his~~ the landowner's rights.

(2) ~~(a) A~~ Except as provided in subsection (2)(b), a landowner may create barriers across streams for purposes of land or water management or to establish land ownership as otherwise provided by law. If a landowner erects a structure ~~which~~ that does not interfere with the public's use of the surface waters, the public may not go above the ordinary high-water mark to portage around the structure.

(b) To protect public safety, a landowner or other person may not create a barrier consisting of barbed wire across a navigable stream. A violation of this subsection (2)(b) is punishable by a civil penalty of \$500.

(3) (a) A portage route around or over a barrier may be established to avoid damage to the landowner's land and violation of ~~his~~ the landowner's rights, as well as to provide a reasonable and safe route for the recreational user of the surface waters.

(b) A portage route may be established when either a landowner or a member of the recreating public submits a request to the supervisors that ~~such~~ a portage route be established.

(c) Within 45 days of the receipt of a request, the supervisors shall, in consultation with the landowner and a representative of the department, examine and investigate the barrier and the adjoining land to determine a reasonable and safe portage route.

(d) Within 45 days of the examination of the site, the supervisors shall make a written finding of the most appropriate portage route.

(e) The cost of establishing the portage route around artificial barriers must be borne by the involved landowner, except for the cost for construction of notification signs of ~~such~~ the portage route, which is the responsibility of the department. The cost of establishing a portage route around artificial barriers not owned by the landowner on whose land the portage route ~~will be~~ is placed must be borne by the department.

(f) Once the route is established, the department has the exclusive responsibility ~~thereafter~~ to maintain the portage route at reasonable times agreeable to the landowner. The department shall post notices on the stream of the existence of the portage route and the public's obligation to use it as the exclusive means around a barrier.

(g) If either the landowner or recreationist disagrees with the route described in subsection (3)(e), ~~he~~ the landowner or recreationist may petition the district court to name a three-member arbitration panel. The panel must consist of an affected landowner, a member of an affected recreational group, and a member selected by the two other members of the arbitration panel. The arbitration panel may accept, reject, or modify the supervisors' finding under subsection (3)(d).

(h) The determination of the arbitration panel is binding upon the landowner and upon all parties that use the water for which the portage is provided. Costs of the arbitration panel, computed as for jurors' fees under 3-15-201, ~~shall~~ must be borne by the contesting party or parties; ~~all~~ All other parties shall bear their own costs.

(i) The determination of the arbitration panel may be appealed within 30 days to the district court.

(j) Once a portage route is established, the public shall use the portage route as the exclusive means to portage around or over the barrier.

(4) Nothing contained in this part addresses the issue of natural barriers or portage around ~~said~~ natural barriers, and nothing contained in this part makes ~~such~~ portage around natural barriers lawful or unlawful."

Section 2. Section 23-2-321, MCA, is amended to read:

1 **"23-2-321. Restriction on liability of landowner and supervisor.** (1) A person who makes recreational
2 use of surface waters flowing over or through land in the possession or under the control of another, pursuant
3 to 23-2-302, or land while portaging around or over barriers or while portaging or using portage routes, pursuant
4 to 23-2-311, is owed no duty by a landowner, ~~his~~ the landowner's agent, or ~~his~~ the landowner's tenant other than
5 that provided in 23-2-311(2)(b) and subsection (2) of this section.

6 (2) A landowner, ~~his~~ the landowner's agent, or the landowner's tenant is liable to a person making
7 recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful
8 or wanton misconduct.

9 (3) ~~No~~ A supervisor or any member of the arbitration panel who participates in a decision regarding the
10 placement of a portage route is not liable to any person who is injured or whose property is damaged because
11 of placement or use of the portage route except for an act or omission that constitutes willful and wanton
12 misconduct."

13
14 **Section 3.** Section 70-16-302, MCA, is amended to read:

15 **"70-16-302. (Temporary) Restriction on liability of landowner -- definitions.** (1) A person who uses
16 property, including property owned or leased by a public entity, for recreational purposes, with or without
17 permission, does so without any assurance from the landowner that the property is safe for any purpose if the
18 person does not give a valuable consideration to the landowner in exchange for the recreational use of the
19 property. The landowner owes the person no duty of care with respect to the condition of the property, ~~except~~
20 that other than that provided in 23-2-311(2)(b). However, the landowner is liable to the person for any injury to
21 person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this
22 section, valuable consideration does not include the state land recreational use license fee imposed under
23 77-1-802 or other funds provided under 77-1-815.

24 (2) As used in this part, the following definitions apply:

25 (a) (i) "Airstrip" means improved or unimproved landing areas on private land used by pilots to land, park,
26 take off, unload, load, and taxi aircraft.

27 (ii) The term does not include municipal airports governed under Title 67, chapter 10, part 1.

28 (b) "Flying of aircraft" means the operation of aircraft, including but not limited to landing, parking, taking
29 off, unloading, loading, and taxiing of aircraft at an airstrip.

30 (c) "Landowner" means a person or entity of any nature, whether private, governmental, or

quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

(d) "Property" means land, roads, airstrips, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

(3) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)

70-16-302. (Effective on occurrence of contingency) Restriction on liability of landowner -- definitions. (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, ~~except that~~ other than that provided in 23-2-311(2)(b). However, the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.

(2) As used in this part, the following definitions apply:

(a) (i) "Airstrip" means either improved or unimproved landing areas on private land used by pilots to land, park, take off, unload, load, and taxi aircraft.

(ii) The term does not include municipal airports governed under Title 67, chapter 10, part 1.

(b) "Flying of aircraft" means the operation of aircraft, including but not limited to landing, parking, taking off, unloading, loading, and taxiing of aircraft at an airstrip.

(c) "Landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the

1 property or with an agreement to use or occupy property.

2 (d) "Property" means land, roads, airstrips, water, watercourses, and private ways. The term includes
3 any improvements, buildings, structures, machinery, and equipment on property.

4 (3) The department of fish, wildlife, and parks, when operating under an agreement with a landowner
5 or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area,
6 subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile
7 area operator on the property, does not extend any assurance that the property is safe for any purpose, and the
8 department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person
9 or property resulting from any act or omission of the department unless the act or omission constitutes willful or
10 wanton misconduct."

11
12 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

13 - END -